Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Emergency Declaratory and Other Relief	)	**WC Docket No. 02-202**

REPLY COMMENTS OF AT&T CORP.

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Pursuant to the Commission's Notice,[1] AT&T Corp. ("AT&T") submits these reply comments in opposition to Verizon's Petition.[2]

INTRODUCTION AND SUMMARY

The undisputed record in this proceeding demonstrates that, accounting for all costs, including bad debt costs, the Bell Operating Companies ("BOCs") continue to reap exorbitant rates of return for all of the access services that they supply to their captive access customers. Indeed, BOCs earned annual rates of return on special access services as high as *50 percent* or more in 2001. The record also shows that these dominant LECs have exceptionally low bad debt uncollectibles even in the present environment – for 2001, the BOCs' access-related bad debt costs were generally less than 1 percent of revenues, and showed only very slight increases from 2000. Notwithstanding these facts, the BOCs contend that there is a "state of crisis" that requires extraordinary Commission action that would reverse decades of consistent Commission

[1] *See* Wireline Competition Bureau Seeks Comment on Verizon's Petition for Emergency Declaratory And Other Relief, *Petition for Emergency Declaratory And Other Relief*, WC Docket No. 02-202 (released July 31, 2002) ("Notice").

[2] *See* Petition for Emergency Declaratory And Other Relief, *Petition for Emergency Declaratory And Other Relief*, WC Docket No. (filed July 24, 2002) ("Petition").

precedent that has properly limited the discretion of dominant LECs to use payment terms as anticompetitive weapons. The BOCs vastly overbroad and discriminatory requests for regulatory intervention should be summarily rejected. Indeed, the marketplace realities confirm that the public interest can be served only by giving the BOCs *less*, not more, discretion over the rates and other terms and conditions on which they provide access services.[3]

The BOCs assert that many carriers have filed for bankruptcy, and they "speculate" that more bankruptcies may occur in the future. According to the BOCs, the relief sought in Verizon's petition is necessary merely to allow dominant LECs the same rights as companies in competitive industries to guard against risks of non-payment. The BOCs provide no support for that claim, and in fact, the opposite is true: if access markets were truly competitive, the BOCs would not be reaping such excessive returns, and customers could move their access business to another supplier if a supplier (as the BOCs do here) proposed to implement commercially unreasonable terms. Further, when the customers of companies in competitive industries uniformly experience hard times, those competitive companies themselves often suffer as well – and they certainly are *not* able to request relief from a regulatory agency to avoid slight increases in bad debt expense. When telecommunications equipment suppliers' customers experienced financial problems, for example, those equipment providers suffered precipitous declines in earnings and in their stock prices. *Cf.* Covad at 2 n.1. Thus, Verizon and the other BOCs plainly seek not equal treatment, but special treatment to which they are not entitled and that would seriously harm competition and consumers.

[3] These marketplace realities include the fact that, because CLEC bankruptcies result in diminished CLEC assets in the marketplace – the very events the BOCs claim as the touchstone of their emergency – the BOCs likely gain increased market power. These BOC requests, therefore, are nothing more than an attempt to leverage newly strengthened market power against the remaining nascent competitors and into in the interLATA markets they are now entering.

To be sure, the Commission should remain vigilant and take appropriate steps to prevent further declines in the telecommunications industry. As the New York Public Service Commission suggests, state and federal regulators should consider a variety of reforms that could protect *consumers* – rather than the dominant LECs' shareholders. But there is as yet no "consensus" on the most appropriate reforms, and the effects of any proposals "must carefully be weighed." NYPSC at 2. At a minimum, however, the Commission should reject Verizon's "Emergency" Petition and other self-serving attempts to capitalize on the industry's financial difficulties.

I. THE LECs HAVE PROVIDED NO FACTS TO SUPPORT THEIR CLAIMS THAT THEY NEED AUTHORITY TO REVISE THEIR TARIFFS TO PROTECT AGAINST BAD DEBT.

The comments confirm that there is no BOC bad debt "emergency." *E.g.*, AT&T at 6-9; Global Crossing at 1; TWTC at 11. The Commission's ARMIS reports show the following levels of switched access uncollectibles for large ILECs in 2001 and 2001:[4]

LEC	2000 Uncollectibles	2001 Uncollectibles
BellSouth	1.95%	2.34%
Qwest	0.18%	0.72%
SWBT	(0.08%)	1.19%
Pacific Bell	(0.01%)	0.25%
Nevada Bell	(0.01%)	0.29%
Ameritech	0.03%	0.11%
SNET	0.00%	0.51%
Verizon – South	0.44%	0.59%
Verizon – North	0.61%	2.44%
Verizon – GTE	0.51%	0.60%

These figures demonstrate that the large incumbent LECs already have very low bad debt levels, and that the increase from 2000 to 2001 is quite small. Indeed, in absolute terms, the level of bad debt is so small that it is in some cases dwarfed by the regulatory penalties that these LECs have

[4] 2000 & 2001 ARMIS 43-01, Table I, Cost and Revenue Table, Traffic Sensitive: Total Column (r), Network Access Services, Row 1020, Uncollectibles, Row 1060.

paid for violations of the Act, which themselves have been too insubstantial to deter misconduct by these carriers. *See* ALTS at 5 (noting SBC has $79 million in bad debt and paid over $400 million in penalties in the same approximate time period).

The BOCs respond with generalized assertions of an industry crisis and of alleged increases in bad debt, but they provide *no* specific evidence to back up their exaggerated claims.[5] That is because the actual levels of bad debt that these carriers have incurred are low, and any slight increase over the last year is certainly not abnormal given the general economic downturn in the economy as a whole. *See* WorldCom at 3.

In this regard, although the BOCs' comments here are filled with irresponsible rhetoric that bad debt levels will affect "national security" (USTA at 3) and will mean that incumbent LECs "cannot justify new capital investment" (SBC at 3) and must "act as guarantors of their competitors' business plans" (Petition at 2),[6] their statements to the investing public confirm that there is no substantial or imminent "bad debt" crisis from non-payment of access services. *See*, *e.g.*, Nextel at 6. Verizon's 2001 Annual Report, for example, contains just a single phrase relating to uncollectibles, noting generally the "increased costs" Verizon faced in 2001, without even discussing access services in particular. Verizon 2001 Annual Report, at 14. Even Verizon's most recent LEC statements to the investing public say little about this alleged "bad debt crisis." Verizon's 2002 Second Quarter "Investor Quarterly," for example, touts its "strong

[5] *E.g.* BellSouth at 2 (claiming, without any citation, that "net bad debt is growing at dramatic rates as a result of bankruptcies of BellSouth's wholesale customers"); USTA at 4 (claiming, with no support, that ILEC face "hundreds of millions of dollars of costs each month"); SBC at 2, 7, 9 (claiming, with no citation, that SBC "has been forced to shoulder hundreds of millions in unpaid debts, most of which have been due for access services").

[6] Even if it were true that BOCs were "tak[ing] the place of the capital market" for certain carriers, BellSouth at 4, they are receiving handsome rates of return for that investment, obtaining 20% rates of return on access in 2001. WorldCom at 2-3; Global Crossing at 3; TWTC at 11; Nextel at 6; Sprint at 5; National ALEC at 8.

operational results" that have been able to "withstand these turbulent times." Verizon, Investor Quarterly 2Q 2002 (July 31, 2002).

Likewise, SBC's annual report for 2001 contains only a brief discussion that "[e]xpenses also increased in 2001 due to an increase in our provision for uncollectible accounts for companies that went out of business and customers with a higher credit risk due to the adverse U.S. economic environment." SBC 2001 Annual Report at 7. These statements – which SBC's Chairman and Chief Financial Officer recently certified – confirm that bad debt levels, while rising slightly, are not a serious problem, particularly when viewed in conjunction with the high rates of return the BOCs generate from access services. Moreover, SBC's statement confirms that the BOCs' minimal increases in bad debt levels are not caused strictly by access customers, but rather by all of SBC's customers. The BOCs, however, propose to respond to these slight increases in bad debt levels *only* by increasing costs for the customers that are also the LECs' rivals. And significantly, none of these BOCs' statements describe a need for further regulatory protection from any risk in alleged bad debt increases – to the contrary, a recent letter from SBC's Chairman to investors explains that "SBC was able to deliver solid results during the second quarter," notwithstanding a "difficult economic and regulatory environment."[7] Far from struggling due to any uncollectibles crisis, the letter states that "SBC remains strongly positioned to weather difficult times, *regardless of short-term economic, competitive or regulatory circumstances*."[8]

Lacking any actual evidence of either substantial or imminent harm from access customers' bad debt, the BOCs turn to the speculative claim that, absent immediate Commission

[7] Letter of Edward E. Whitacre, Jr., Chairman and CEO, SBC, to Shareowner (regarding 2d Quarter 2002) (available at http://www.sbc.com/investor_relations/0,5931,1,00.html).

[8] *Id.* (emphasis added).

action, they face a greater *future* risk of nonpayment *if* bankruptcies continue. *E.g.*, SBC at 9 ("SBC losses *could* skyrocket *if* the meltdown . . . continues"); BellSouth at 2 (claiming that the "*risk* that BellSouth faces today . . . is different from that which existed even three years ago"); USTA at 2 (noting "it is *speculated* that more bankruptcies may soon occur" and claiming a need to "prepare for *the possibility* that additional bankruptcies will be forthcoming") (all emphases added). But these statements only confirm that there is no current "bad debt" emergency, and that immediate action is *not* required. Rather, the Commission may take the proper time to evaluate all of the evidence, and consider all proposals for access reform, including solutions to the BOCs' well-documented excessive rates and poor provisioning.

II. THE LECs' PROPOSED TARIFF REVISIONS ARE UNREASONABLE.

The comments also confirm that the BOCs' specific proposals to revise their tariffs to address the alleged "bad debt" crisis are overbroad, unreasonable and anticompetitive.[9] Although the BOCs' comments demonstrate that their concern lies largely with the risks associated with the WorldCom bankruptcy, their tariff proposals are instead aimed at the BOCs' remaining solvent access customers, and apply regardless of creditworthiness and actual ability to pay.[10] As the comments here and in response to the specific BOC tariff proposals demonstrate, the BOCs could and would use the new authority they seek to give themselves

[9] AT&T at 14-20; ALTS at 4; Global Crossing at 6-7; TWTC at 4-12; Covad at 5-6; CompTel at 2-7; Evercom at 2-3; Mpower at 3-7; Nextel at 4-8; WorldCom at 4-6; National ALEC at 4-8. Moreover, AT&T agrees with Sprint that the current LEC tariff provisions on security deposits-advance payments and termination periods were prescribed by the Commission, and cannot be modified except as provided by Section 205 of the Communications Act. *See* Sprint at 3 (citing cases). Modifying a rate prescription by declaration pursuant to 47 C.F.R. § 1.4 and without Federal Register notice would defeat the purposes of section 205. This is particularly so because, as Sprint explains, declaratory rulings should be issued only where facts are clearly developed and not heavily disputed, which is not the case here. *See* Sprint at 2.

[10] *E.g.*, Nextel at 7; ALTS at 4; Time Warner Telecom at 5; WorldCom at 6; National ALEC at 5.

broad discretion to demand substantial security deposits or advance payments from their competitors.

For example, the comments explain that the LEC proposals to require security deposits from access customers that owe more than $250,000 for access services that are 30 or more days past due (or for customers that are late with two payments in 12 months) are vastly overbroad.[11] The nature of the access billing process means that these conditions could encompass carriers that are late or in arrears for reasons entirely unrelated to risk of non-payment. The BOCs' access bills are complex and extremely lengthy, often equating to thousands or even tens of thousands of pages.[12] And the comments show that, in many cases, the BOCs provide access bills that are late or "chronically inaccurate," and which may require more than 30 days to audit and properly verify.[13] Indeed, Time Warner explains that since 2001 it has "successfully disputed approximately $13 million in ILEC bills." TWTC at 7. Given these facts regarding access billing, access customers may be justifiably late with payments or need longer than 30 days to pay an access bill in order to correct errors or verify the accuracy of the bills.[14] The BOC proposals would place every access customer at the whim of the BOC, which would be entitled to demand a significant security deposit, even in connection with "late" payments having nothing

[11] *E.g.*, Mpower at 3; National ALEC at 5; Evercom at 2-3; TWTC at 6-7.

[12] *E.g.*, Mpower at 4 & n.3 (Mpower receives 50,000 pages of bills per month from SBC alone); TWTC at 7 ("TWTC receives 1,700 ILEC invoices every month").

[13] *E.g.*, Mpower at 3; National ALEC at 5; Covad at 6; TWTC at 6-7.

[14] In fact, the BOC proposals would provide dominant LECs with perverse incentives to provide *less* accurate and *less* timely access bills, under the view that the customer will not pay on time and trigger a security deposit requirement. *See 1987 Access Reform Order*, 2 FCC Rcd. at 304 (revisions to tariffs must provide an "opportunity to review th[e] bills properly," otherwise it could "impair the cooperative spirit [the Commission] ha[s] attempted to promote between carriers and customers").

to do with any financial difficulties.[15] For these reasons, the BOCs' proposals simply are extremely overinclusive, and would trigger security deposit requirements for carriers that are making good faith efforts to verify and then timely pay their bills.[16]

Likewise, the BOC proposals entitling them to demand deposits and accelerate termination of service from access customers with less than investment grade credit are far too broad. As WorldCom points out, in most years, less than 10 percent of non-investment grade companies default on their obligations. WorldCom at 6; Time Warner Telecom at 5 & n.4. There is accordingly no demonstrated correlation between these two factors that could justify granting the BOCs discretion to obtain security deposits from *all* of its access customers with non-investment grade ratings. Indeed, even though the BOCs proclaim that these supposedly objective credit ratings are an adequate gauge of non-payment risks, the "business of debt rating is hardly science" – as is proven by the fact that many now-defunct firms once held high ratings shortly before their demise. Covad at 5. These proposed conditions target carriers that present little risk of non-payment, and should be rejected.

III. THE COMMENTS CONFIRM THAT THE COMMISSION NEED NOT ISSUE ANY BROAD POLICY STATEMENTS ON BANKRUPTCY LAW.

The comments also fully explain why the Commission need not address the proposals in Verizon's petition requesting rulings on the rights and obligations of carriers in bankruptcy proceedings and on the migration of customers between competitive carriers.

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[15] *See 1984 Access Tariff Order*, 97 F.C.C.2d at 1155 (rejecting BOC-proposed tariff revision that "could impose significant sanctions on ICs or end users for what might be quite insignificant violations of the tariff")

[16] And they are also poorly tailored to address the claimed problem: to the extent the BOCs are concerned about a carrier like WorldCom, these proposed tariff provisions would not necessarily have allowed the BOCs to demand security deposits from WorldCom substantially before its bankruptcy filings.

First, with regard to Verizon's request that the Commission implement policy pronouncements regarding requests for advance payments for telecommunications services and regarding the requirements of Section 365 of the Bankruptcy Code, relating to carriers' purchases of a debtor's assets, the comments explain that there is no basis for the Commission to adopt a broad policy on bankruptcy law.[17] In both instances, the bankruptcy courts are entrusted with making the fact-specific determinations regarding the application of the Code, and there is no basis for the Commission to opine, at a general level, on the meaning of those provisions in the telecommunications context. *See* AT&T at 23-25.

The BOCs are virtually the only commenters to agree with Verizon's request, but they too fail to explain how the Commission would be able to issue a broad policy statement that would assist the bankruptcy courts in particular cases in applying the Bankruptcy Code's terms. With regard to advance payments, SBC claims that "[t]he *only* way" to assure continuity of service is to "require bankrupt carriers to pay for services in advance or other comparable measures, like deposits." SBC at 10-11. While AT&T agrees that such a remedy can be appropriate in many cases (such as the WorldCom case), it is not always appropriate. *See* AT&T at 22-23. Therefore, the Commission should not adopt any broad policy, but should instead intervene in appropriate cases to offer guidance to the bankruptcy court. Attempting to consider and resolve all of the considerations of communications policy and bankruptcy law – in advance – would be impossible.

The BOCs alone also support Verizon's request to issue a ruling on the meaning of section 365 of the Bankruptcy Code. However, like Verizon's Petition, they never explain why the bankruptcy courts need the Commission's assistance in interpreting that section of the Code

[17] *See* CompTel at 8-11; Covad at 4; ALTS at 3; Global Crossing at 7-8; WorldCom at 7-11; Nextel at 9; TWTC at 13-15; CTC Comm. et al at 5-13.

or a how a generic pronouncement could aid the necessarily fact-specific determinations in particular cases.

Second, the comments also make clear that the Commission should not in this proceeding address the migration of customers between competitive carriers.[18] Verizon's request is "vague" and "truly mystifying." CTC Comm. at 15; Global Crossing at 11. So far as the request can be understood, some of these customer migration issues are currently being addressed at the state level. NYPSC at 3. As the NYPSC describes, it adopted "detailed procedures" to handle ordinary migrations, and also instituted a "collaborative process with extensive input from industry and other participants" to address the "mass migration" issues that occur where many customers must be moved from a carrier exiting the market. NYPSC at 3-4. The Commission should plainly reject Verizon's Petition to the extent it asks the Commission to adopt on a far less developed record procedures that might pre-empt the efforts of the NYPSC and those in other states. *See* CTC Comm. at 15 ("it took years of collaborative meetings to establish carrier-to-carrier migration guidelines in New York. Yet Verizon provides no detail of the information missing" from these proceedings).

[18] *See* CTC Comm. et al at 15-16; TWTC at 17-18; CompTel at 9; ALTS at 2; Global Crossing at 11-12.

CONCLUSION

For the foregoing reasons, the Commission should reject Verizon's Petition.

Respectfully submitted,

/s/ Peter H. Jacoby

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August 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2002, I caused true and correct copies of the forgoing Petition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the following service list.

Dated: August 22, 2002
Washington, D.C.

/s/ Patricia Bunyasi
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